

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 03-00236 SI

Plaintiff,

**ORDER DENYING MOTION FOR
APPOINTMENT OF APPELLATE
COUNSEL**

v.

NIKOLAI TEHIN,

Defendant.


Defendant Nikolai Tehin has moved the Court to appoint appellate counsel to represent him in his appeal of this Court's August, 22, 2012, order denying his motion to vacate, set aside, or correct sentence.

A district court may appoint counsel to represent a person seeking relief under 28 U.S.C. section 2255 whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." 18 U.S.C. § 3006A(a)(2)(B); *see also* 28 U.S.C. § 2255(g). The decision to appoint counsel is within the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. *See id.* It does not appear that appointment of counsel is necessary in this action, particularly where the Court has already denied defendant's motion for a certificate of appealability with respect to the same August, 22, 2012, order denying his motion to vacate, set aside, or correct sentence. The Court reiterates that "[r]easonable jurists would not 'find the district court's assessment of the constitutional claims debatable

1 or wrong.” Dkt. 205; *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, defendant’s
2 motion for appointment of counsel is DENIED.

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4 **IT IS SO ORDERED.**

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6 Dated: November 15, 2012



SUSAN ILLSTON
United States District Judge